IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PIL WRIT PETITION NO.70 OF 2006

Kirit Somaiya & Ors. ...Petitioners

Vs.

The State of Maharashtra & Ors. ...Respondents

Shri Rajeev Kumar with C.D. Mehta i/by Dhruve Liladhar & Co. for the Petitioners.

Shri R.M. Sawant, Government Pleader, for the Respondent Nos.1 and 3 to 6.

Ms Priti Purandare for the Respondent No.7.

Shri Gautam Patel for the Respondent No.8.

CORAM : KSHITIJ R. VYAS, C.J. &
ABHAY S. OKA, J.

DATE ON WHICH ORDER IS RESERVED : JUNE 14, 2006.

DATE ON WHICH ORDER IS PRONOUNCED: JUNE 21, 2006.

P.C.:

1. We have heard the learned Counsel Shri Rajeev Kumar appearing for the Petitioners. We have also heard Shri R.M. Sawant, the learned Government Pleader appearing for the Respondent Nos.1 and 3 to 6. Submissions of Ms Purandare appearing for the Respondent No.7 and Shri Gautam Patel appearing for the Respondent No.8 are also heard.

2. The Petitioners claim to have filed this Writ Petition in the interest of public at large. The

grievance of the Petitioners is that in the city of Mumbai as well as in the adjacent city of Thane, the Respondent Nos.1, 2, 4 and 5 have started making Mutation Entries in revenue records of the private properties to the effect that the properties are private forests within the meaning of the Maharashtra Private Forests (Acquisition) Act, 1975 (hereinafter referred to as the said Act of 1975). The contention of the Petitioners is that entries are being made in the revenue records in respect of lands which are in fact not at all private forests.

3. The learned Counsel appearing for the Petitioners has invited our attention to the orders passed by this Court in Public Interest Litigation No.17 of 2002 which was filed by the Respondent No.8 - The Bombay Environmental Action Group. He invited out attention to averments in paragraph No.8 of the Petition. He submitted that such entries have been made in the revenue records of the properties in Mumbai held by ESIS Hospital and Bhaba Automic Research Centre. He submitted that entries have been made in the revenue records of the lands which are already developed for residential use to the effect that the said lands are private forests. He submitted that the flat purchasers who are occupying flats in

the buildings constructed on the said lands are not at all in a position to approach the competent authority for challenging the action of the authorities of making Mutation Entries. He submitted that the Mutation Entries which are being erroneously made in the revenue records of the private property will have far reaching consequences as action under the said Act of 1975 will be taken against the structures standing on the properties. He, therefore, submitted that public interest was directly affected by the action of the Respondents.

4. The learned Government Pleader appearing for the Respondent Nos.1 and 3 to 6 submitted that the entries in revenue records have been made in implementation of the provisions of the said Act of 1975. He invited our attention to the various provisions of the said Act of 1975 and submitted that no fault can be found with the action of the authorities of implementing provisions of law especially in the light of directions given by this Court in Public Interest Litigation No.17 of 2002 filed by the Respondent No.8. He submitted that assuming that in some individual cases entries are made wrongly, remedy is available to the concerned affected persons to challenge the Mutation Entries.

He pointed out that in case a contention is raised that the land is not a forest land, remedy is available under the said Act of 1975 of approaching the Collector who can hold adjudication and give appropriate decision. He submitted that the prayers which are made in this Petition can never be granted and even assuming that said prayers are granted, the same will be contrary to the orders passed by this Court in the Public Interest Litigation filed by the Respondent No.8.

5. The learned counsel appearing for the Respondent No.8 (The Bombay Enviornmental Action Group) submitted that by making Mutation Entries in the revenue record, the State Government is implementing the provisions of law. He submitted that necessary steps are being taken by the State Government on the basis of orders passed in Public Interest Litigation No.17 of 2002. He submitted that there may be few individual cases where the State Government might have made erroneous entries in the revenue record. But in all those cases, remedy is available to the affected persons to approach the authority under the said Act of 1975. He submitted that if any ad-interim order is passed in this Petition, the same will have effect of nullifying the

order passed in Public Interest Litigation No.17 of 2002. He invited our attention to the fact that the defination of private forest in the said Act of 1975 is very wide.

6. We have carefully considered the submissions made by the learned Counsel appearing for the parties. Our attention was invited to the orders passed in the Public Interest Litigation No.17 of 2002 filed by the Respondent No.8 herein and others. The grievance of the Petitioners in the said Public Interest Litigation was that though area of 2,49,622.10 hectares constituted acquired forest under the provisions of the Maharashtra Private Forests (Acquisition) Act, 1975, the State Government was not taking steps for implementation of the provisions of the said Act of 1975. In order dated 10th January, 2005 a Division Bench of this Court referred to affidavit of the Principal Secretary (Revenue) of the Government of Maharashtra in which reference was made to the acquired forest having area which is referred to above. It was stated in the affidavit that the Revenue Wing of the Revenue and Forest Department of the Government of Maharshtra has already issued instructions regarding updating all the private forest land records and the Divisional Commissioner have been

asked to monitor the progress of work. It is stated in the affidavit that in case of area of 01,28,911.11 hectares, Mutation Entries have been carried out till September 2004. In the said order, following direction was given by this Court to the State Government:

> "We directed the State of Maharashtra to give us clear information whether the records of the remaining acquired forest land have been updated and if not, within what period the same would be updated."

7. In the further order dated 22nd June, 2005 passed by this Court in Public Interest Litigation No.17 of 2002, grievance made by the Respondent No.8 herein was noted that the land records in the entire State of Maharashtra are incomplete and large number of problems are encountered because of not updating land records in the State of Maharashtra. By the said order the Petition was disposed of by directing the Chief Secretary of the State to issue circulars within three weeks to the District Collectors and to the Magistrates and other concerned officials directing them to complete the entire proceedings expeditiously on or before 31st May, 2006. While disposing of the

Petition, this Court noted the undertaking given by the learned Advocate General to file quarterly reports as regards progress of the work before the Registrar (General) of this Court.

8. The Petitioners have annexed a copy of circular dated 16th December, 2004 issued by the Additional Chief Secretary (Forest) of the Government of Maharashtra. In the said circular, attention of District Collectors was invited to the provisions of the Forest (Conservation) Act, 1980 and the decision of the Apex Court in the case of T.N. Godavarman Vs. Union of India. The Collectors were directed not to issue any certificate under section 6 of the said Act of 1975 without obtaining prior approval of the Government of India under section 2 of the Forest (Conservation) Act, 1980. On 01st January, 2005, the Revenue and Forest Department of the Government of Maharashtra issued a circular for implementation of the acquisition of private forests under the said Act of 1975. A direction was also given to ensure that necessary Mutation Entries are made. Similar directions have been issued by the State Government by circular dated 22nd February, 2005. Another circular was issued on 14th July, 2005 by the Chief Secretary of the Government of Maharashtra directing that in

view of the decision of this Court in Public Interest Litigation No.17 of 2002, necessary entries should be made in revenue records regarding acquisition of private forests under the said Act of 1975. Thus, it is apparent that entire exercise has been undertaken by the State Government and its officers on the basis of the directions given by the Division Bench of this Court in Public Interest Litigation No.17 of 2002.

9. In the memorandum of Petition as well as in the additional affidavit, instances have been given by the Petitioners of the lands allegedly owned by the Central Government Employees Co-operative Housing Society Ltd., ESIS hospital, Johnson and Johnson India Pvt. Ltd. and Bhaba Automic Research Centre and it was contended that though the said properties are not acquired under the said Act of 1975, entries have been wrongly made in the revenue records. From the averments made in the Petition, the grievance appears to be that in the cities of Bombay and Thane, the State Government has made erroneous entries in the revenue records in respect of some of the lands which are not private forests. This is not a case where Petitioners are trying to espouse the cause of poor or illiterate litigants who are unable to adopt efficacious remedies available under the said Act of

1975. The illustrations which are given in the Petition are of limited companies, public undertakings, registered co-operative housing societies etc. The learned Counsel appearing for the Petitioners tried to submit that flat purchasers who have purchased the flats will be affected by such Mutation Entries. From the averments made in the Petition it is apparent that the Petition is not filed for espousing the cause of flat purchasers. It is not possible to accept that the purchasers of flats in cities like Mumbai and Thane are not in position to adopt remedies provided under the law. In any event, in case in any such erroneous entries are made in revenue records, the flat purchasers can always avail of appropriate remedies. It is not the case of the Petitioners that the State Government or its officers are out to demolish the existing buildings without following due process of law. All that is being done today is that Mutation Entries are being made for giving effect to the provisions of the said Act of 1975 on the basis of directions given by this Court in Public Interest Litigation No.17 of 2002. Even if State Government decides to take possession of any of the private forests, it is obvious that State Government is bound to follow due process of law and the principles of natural justice.

10. Prayers (a) to (c) made in this Petition read thus:

(a)(i) that an independent Committee be constituted by this Hon’ble Court to examine and scrutinize the mutation entries made in the land records in respect of forest lands acquired under Maharashtra Private Forest Acquisition Act, 1975.

(ii) the Committee so constituted be directed to submit periodical reports to this Hon’ble Court.

(iii) this Hon’ble Court pass appropriate orders and directions as this Hon’ble Court may deem fit on the reports filed by the Committee.

(b) For a writ of mandamus or any other appropriate writ or direction of this Hon’ble Court, ordering and directing Respondent Nos.1,3,4 and 5 to submit to this Hon’ble Court, a report with

full particulars of land identifying the properties in Mumbai which have been acquired as forest lands under Maharashtra Private Forest Acquisition Act, 1975 and to publish such information in prominent newspapers, gazette, identifying the forest lands acquired in Mumbai.

(c) For a writ of certiorari or any other writ or direction of this Hon'ble Court, calling for the records of the case, the land records in which mutation entries have already been made and after examining the legality and propriety of the same, to quash and set aside all mutation entries which do not relate to acquired forest lands.

11. The orders passed in Public Interest Litigation No.17 of 2002 clearly show that the State Government has completed the exercise of identifying the private forests within the meaning of said Act of 1975. Infact, the order passed by this Court refers to the affidavit filed by the Principal Secretary

(Revenue) of the Government of Maharashtra. The Petitioners want this court to consider legality and propriety of several Mutation Entries which are made by the State Government and to quash and set aside the said Mutation Entries. This exercise cannot be undertaken by this Court in a Petition under Article 226 of the Constitution of India. Under the Maharashtra Land Revenue Code, 1966 there are two appeals provided against Mutation Entries. If Mutation Entry is made even though the land is not a private forest, the said remedy is always available. If the owner or person affected desires to challenge the status of any particular land as a forest, adequate machinery for adjudication is available under the said Act of 1975. Whether a particular land is a forest or not is a question of fact which will have to be decided by the competent authority under the said Act of 1975 after examining the evidence. This Petition under Article 226 of the Constitution of India cannot be entertained for examining the legality and validity of large number of Mutation Entries which are already made and which will be made in future.

12. There is another aspect of the matter. The Petitioners themselves have contended before us that Mutation Entries may affect innocent flat purchasers.

If there are lands which are already affected by the said Act of 1975, it is desirable that entries in revenue record are made so that the flat purchasers who intend to purchase the flats in the property in question will be put to notice regarding applicability of the provisions of the said Act of 1975 to the lands in question.

13. It is well settled law that Mutation Entries by itself do not confer any right or create any right or liability. The Mutation Entries are being made by the State Government in implementation of the orders passed by this Court in Public Interest Litigation No.17 of 2002. The said Public Interest Litigation No.17 of 2002 has been already disposed of finally in terms of directions contained in order dated 22nd June, 2005 passed by this court. Therefore, grant of reliefs in terms of prayers (b) and (c) may not be consistent with the directions which are already issued by this Court in the said Public Interest Litigation.

14. For all these reasons we are not inclined to entertain this Petition. We, however, clarify that we have not made any adjudication on merits as regards rights of the private parties in respect of the lands

which are referred to in this Petition by the Petitioners by way of illustration. This order should not be construed to mean that affected individuals are left without any remedy. We clarify that all affected individuals can take recourse to the statutory remedies.

15. Subject to observations made above, the Writ Petition is rejected.

CHIEF JUSTICE

ABHAY S. OKA, J